

### III. REMARKS

- STATUS OF THE CLAIMS

Claims 1, 3-7, 17 and 19 were pending during the issuance of the Office Action. Claim 1 is amended. Applicant asserts that the amendment does not introduce new matter. Support for the amendments to Claim 1 may be found throughout the instant specification and especially at pages 6-7 and Figure 2 and 2a.

- REJECTION UNDER 35 U.S.C. §102

- Examiner's Position:

The Examiner rejects claims 1, 3, 6, 7 and 17-19 as being anticipated by Pelecq (FR 2537092). It is the Examiner's opinion on page 2 of the office action that Pelecq anticipates the recently amended claim 1 by disclosing the "...require[ment] of an external push of push button 7."

- Applicant's Response

Applicant thanks Examiner for the thoughtful comments but respectfully disagrees with the same. Applicant traverses the rejection, at least in part, on the basis that the cited reference does not show each and every element of the instant Claim as presently amended. On the contrary, the cited reference, Pelecq, neither discloses, claims, nor even remotely suggests the subject matter of claim 1.

With respect to the currently amended instant claim 1, the limitations require, in part:

a head having a head surface at a forward end of the head and a shaft on the back end, the head being configured to form a slideable seal continuously along with the inside surface of a sample tube;

This is patently distinct from Pelecq who contrary to the Examiner's opinion on page 3 of the office action is silent on a head with a continuously slideable seal continuously along the side walls or even a head with any type slideable seal. The absence of this advantageous feature is clearly shown in *Figure 2* of Pelecq – the head in that figure as described by Examiner is the unlabelled part that connects to 22. However since Pelecq clearly illustrates a gap between the head and the side walls and therefore can not be a slideable seal. Furthermore, Pelecq explicitly states that the head is not slideably but is instead “a mobile valve.” (page 3, line 13 of the translation). A mobile valve does not operate as a slideable seal. A mobile valve instead forms a contact seal with the valve seat, in this case 23. The mobile valve of *Figure 2* responds to an external force on the push button 7 to separate the mobile valve from the valve seat 23 to provide a gap for release of the fluid propelled by the internal pressure therein.

Applicant asserts that the instant Claim 1 is patently distinct from Pelecq for at least the slideable seal limitation.

Accordingly the Applicant further asserts that the rejection is improper under 35 U.S.C. §102. Applicant requests reconsideration and withdrawal of rejection of Claim 1. Applicant further believes the rejections of claims 3-7, 17 and 19 that dependent from now allowable claim 1 moot and respectfully requests the withdrawal thereof.

- REJECTION UNDER 35 U.S.C. §103

- Examiner's Position

Claims 4 and 5 are rejected under 35 USC 103(a) as being *prima facie* obvious over Pelecq (FR 2537092). In particular, the Examiner alleges that the cited reference to Pelecq discloses a variety of cross-sectional dimensions and diameters which relative ratios would have been obvious to one of ordinary skill in the art to allow varying flow rates.

Applicant's Response

Applicant disagree and traverses the rejections.

Additionally since the rejected Claims 4 and 5 depend from the now believed allowable Claim 1, Applicant deems the rejections moot.

Accordingly Applicant asserts the rejections are improper under the statute and request reconsideration and withdrawal of the rejection of Claims 4 and 5.

**CONCLUSION**

Applicants assert that this response is a good faith effort to place the application in condition for allowance. Applicants respectfully seek early allowance of the pending claims.

Respectfully submitted,

Date: May 26, 2009



Marvin R. Wachs,  
Reg. No.: 58,227  
KELLEY DRYE & WARREN LLP  
400 Atlantic Street  
Stamford, CT 06901  
Phone 203-351-8072  
Fax: 203-327-2669  
E-mail: [mwachs@kelleydrye.com](mailto:mwachs@kelleydrye.com)